

REMARKS

The present Amendment responds to the Office Action mailed October 1, 2008. Accordingly, this Amendment is timely if filed by April 1, 2009 and accompanied by a three (3) month extension of time concurrently filed herewith. Claims 9 and 11 have been amended to correct their dependency. No new matter has been added.

In the Office Action, the Examiner has withdrawn the previous rejections and set forth new rejections based on newly identified prior art.

Claims 1, 2, 4, 9, 11-16, 18-25 and 41 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Agbaje et al. (USAN 2003/0096708) and The Agrochemical Handbook. Applicants respectfully traverse.

Agbaje is directed to compositions comprising diamines or other polyamines and ether amine surfactants and the use of these surfactants in glyphosate compositions. Agbaje teaches that the compositions can optionally contain one or more water-insoluble herbicides and includes metolachlor and S-metolachlor in a long list of herbicides (Paragraph [0107]). Agbaje teaches numerous excipients that are used in the compositions of the Examples including Isopar M.

There is nothing in Agbaje that would lead one skilled in the art to prepare a composition comprising metolachlor or S-metolachlor with a synergistically active amount of a lipophilic additive comprising at least one member selected from the group consisting of stearic acid, stearyl alcohol and hydrocarbon fluids containing greater than 50 wt.% paraffins.

Agbaje fails to teach or reasonably suggest the improved activity of the acetamide when combined with the lipophilic additive as demonstrated in the examples of the present application. Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness and accordingly the rejection should be withdrawn.

Claims 1, 2, 4, 9, 11-14, 16 and 18-23 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gillespie et al. (US 6,093,680) and The Agrochemical Handbook.

Applicants respectfully traverse.

Gillespie is directed to compositions comprising (a) an exogeneous chemical; (b) a first excipient substance which is a ester of a fatty acid and (c) an amphilic substance having a critical packing parameter greater than 1/3. Of the hundreds of exemplified compositions, Isopar V is only used in Example 12, composition 12-18, with the IPA salt of glyphosate as the exogeneous chemical. No examples with metolachlor or S-metolachlor are provided.

There is nothing in Gillespie that would lead one skilled in the art to prepare a composition comprising metolachlor or S-metolachlor with a synergistically active amount of a lipophilic additive comprising at least one member selected from the group consisting of stearic acid, stearyl alcohol and hydrocarbon fluids containing greater than 50 wt.% paraffins.

Gillespie fails to teach or reasonably suggest the improved activity of the acetamide when combined with the lipophilic additive as demonstrated in the examples of the present application. Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness and accordingly the rejection should be withdrawn.

As this response is submitted within 6 months from the mailing date of the Office Action, a 3-month extension of time is included herewith.

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7586
Date: April 1, 2009

/Thomas Hamilton/
Thomas Hamilton
Attorney for Applicants
Reg. No. 40,464